IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 258 OF 2007

IN

SUIT NO. 1241 OF 1989

Smt. Pushpa Prabhashchand Jain & Ors. .... Plaintiffs

Vs.

Rakesh s/o Sanatkumar Ramswarup alias Rakesh Jain & Ors. .... Defendants

Ms. Tasneem Zaidy i/b Zaidy & Co. for Plaintiffs.

Mr. R.V. Govilkar i/b M/s S.V. Pikale for defendant no. 1

CORAM : SHRI. A.M. KHANWILKAR, J.
DATE : 3RD APRIL, 2007

P.C.

1) Heard learned counsel for the parties. Perused the relevant documents and orders on record. Indeed interim order was passed injuncting the applicant-original defendant no.1 from dealing with the suit property. That order was passed on the assumption that the applicant-original defendant no. 1 had no right, title and interest in the suit property to deal with the same.

2) The applicant-original defendant no. 1 on

the other hand asserted that he has succeeded to the suit property on the basis of a Will. Now it transpires that in Testamentary Suit No. 71 of 1989, in relation to the said Will, which operates in favour of applicant- original defendant no. 1, has been answered in favour of the applicant-defendant no. 1. Against that decision, matter was carried in appeal by the opposite party, which appeal also has been dismissed by the Division Bench of this Court. Against the decision of the Appellate Bench, the opposite party carried the matter in Supreme Court bearing SLP no. 3298 of 2007 which has been summarily dismissed on 2nd March 2007. With the dismissal of the S.L.P. by the Apex Court, the declaration in favour of the applicant- original defendant no. 1, founded on the Will which operates in his favour, has become final. If it is so, the applicant- original defendant no. 1- in fact will be entitled to deal with the property in the manner provided in the Will. If so, the interim order passed by this Court on the earlier occasion cannot be allowed to continue for the simple reason that the said injunction against the applicant- original defendant no. 1 was on the assumption that he had no right, title and interest in the suit property. Accordingly this motion should succeed in terms of

prayer Clause ‘A’.

3) Learned counsel for the opposite party would however contend that review petition has been lodged in the Supreme Court. As there is no interim stay of further proceedings, pending before this Court, the fact that review petition has been lodged by the opposite party will be of no avail. In fact, sufficient time was granted to the opposite party to seek appropriate direction from the Apex Court, if so advised. However, till today no interim order of Supreme Court has been produced before this Court.

4) In the circumstances, this notice of motion is made absolute in terms of prayer Clause ‘A’.

(A.M. KHANWILKAR, J.)